IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 205 of 1994

Between:

Naval Scientific and Technological Laboratory Employees

Cooperative House Building Society Ltd., Vepagunta

rep. by its Secretary, Mr.B.Baleswar, S/o. Late Sri B.D.Rajaiah
Aged 52 years, residing at Visakhapatnam.

..... PETITIONER

AND

1 Visakhapatnam Urban Development Authority rep. by its

Vice Chairman, Visakhapatnam
2 The Special Officer, Urban Land Ceiling, Visakhapatnam.
3 The State of Andhra Pradesh represented by its

Secretary, Government, Housing, Municipal
Administration and Urban Development Department.

Secretariat, Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus to declare the action of the respondents in not granting approval to lay out of land purchased by the petitioner of an extent of ACs.3-80 cents in Sy.No.193/1, Vepagunta village, Visakhapatnam District as in excesses of the Ceiling limit or otherwise as illegal, arbitrary and issue a consequential direction to

respondents to accord approval to the said lay out and pass such other order or orders.

Counsel for the Petitioner : MR. A. VENKATA RAMANA

Counsel for the Respondent No.1 : SMT.SUMALINI REDDY

Counsel for the Respondent No.2 : GP FOR MUNCIPAL ADMN. & URBAN DEVELOPMENT.

The Court made the following :

ORDER:

The petitioner is a Society registered under the A.P. Co-operative Societies Act, 1964. It was formed with a view to acquire land for the purpose of providing houses and house sites to its members. In that direction, the petitioner proposed to purchase land admeasuring Ac.3.18 cents in Survey No.193/1 of Vepagunta village, Visakhapatnam. The Society also addressed a communication to Visakhapatnam Urban Development Authority ('VUDA' for brevity), the first respondent herein, seeking necessary clarification as to whether VUDA is acquiring the said land for any public purpose. In response thereto, the Secretary of VUDA by letter dated 18.2.1980 informed the petitioner that the land comprised in Survey No.193/1 is not under acquisition by VUDA, Visakhapatnam. Before purchasing the land, it appears that the petitioner advertised in the Newspapers informing the general public about their intending purchase and inviting objections. Further, it is alleged that the petitioner society also approached the Special Officer, Urban Land Ceiling, Visakhapatnam for necessary clarification. After obtaining such clarification and as no objections were received from the general public, on 5.9.1980, the petitioner society obtained registered sale deed from the vendor Adapa Narasimha Raju.

The petitioner alleges that the land, which they purchased, was divided into plots and the vendor obtained necessary lay out approved by Gram Panchayat, Vepagunta. However as required under the provisions of A.P. Urban Areas (Development) Act, 1975, (for brevity 'the Act') so as to obtain approval for a fresh layout, the petitioner submitted an application on 13.5.1981 along with approved layout to VUDA. By a communication dated 3.8.1981, the Chief Town Planner of VUDA informed the petitioner that the land is under acquisition and hence the layout cannot be approved. In the meanwhile, petitioner sent a representation to the Chief Minister of the State. Preliminarily, for that purpose action was initiated and person-incharge of VUDA addressed Authorities under the Urban Land Ceilings Act seeking certain clarifications. The Special Deputy Collector declined to give Urban Land Ceiling Clearance. The Government of Andhra Pradesh issued a notification on 23.8.1988 in A.P. Gazette Part-I Extraordinary changing the land in Survey No.193 from recreation purpose to residential purpose. Therefore the petitioner society again approached VUDA on 23.3.1989 to approve the layout. They were however returned advising the petitioner to resubmit along with necessary certification that the land in Survey No.193/1 does not belong to Simhachalam Devasthanam for taking necessary action. At that stage, the petitioner filed the

present writ petition seeking a writ of Mandamus declaring the action of the respondents in not granting approval to layout in respect of the land purchased by the petitioner as illegal and arbitrary, and for a consequential direction to approve the lay out.

The writ petition was admitted on 18.1.1994. On the same day, this Court passed interim orders of stay of dispossession as well as allotment of the land to any other person by Respondent Nos.1 and 2 until further orders. Though the writ petition was admitted a decade ago, no counter affidavit is filed either by VUDA or respondent Nos.2 and 3. However submissions were made by the learned Standing Counsel for VUDA based on the instructions.

Learned counsel for the petitioner Sri A. Venkata Ramana submits that VUDA has been changing stand from time to time. When the petitioner has complied with all legal requirements and when the Government also issued Notification under the Act, any delay for sanctioning the layout would be arbitrary and illegal. The learned counsel also submits that even if there is a title dispute, VUDA cannot reject for sanction of layout. Per contra, learned standing Counsel Ms. Sumalini Reddy submits that the land comprised in Survey No.193/1 is also claimed by Sri Varaha Laxmi Narasimha Swamy Devasthanam, and therefore, the petitioner was advised to procure a certificate to the effect that the land does not belong to them. She also submits that the petitioner society failed to submit necessary clarification or no objection from the Urban Land Ceiling Authority as the land is within the Visakhapatnam Urban Agglomeration. Therefore she submits that the VUDA was justified in not sanctioning the layout.

At the initial stage, when the Chief Town Planner refused approval of land on the ground that the land is under acquisition, the petitioner society sent a representation on 10.2.1983 to the Government. The Government having considered the grievance of the petitioner issued a memorandum being Memo. No.1961/12/83-3 M.A. dated 19.5.1984, which reads as under:

The attention of the Secretary, Naval, Science and Technological Laboratory Employees Co-operative House Building Society is informed that the Visakhapatnam Urban Development Authority has informed that request of the society for approval of layout was rejected for want of Urban Land Ceiling Clearance. He is therefore requested to approach the Visakhapatnam Urban Development Authority with Urban Land Ceiling Clearance for approval of layout.

Having received the memo from the Government informing the petitioner that they should approach the VUDA with necessary Urban Land Ceiling Clearance, instead of doing so, the petitioner again approached the VUDA. Consequently VUDA also addressed a letter to the Secretary of the petitioner society requesting to resubmit plans with a certificate to the effect that the land they purchased does not belong to Simhachalam Devasthanam. These two communications would show that respondent Nos.1 and 3 can not be hauled up for any inaction on their part. On the contrary, it is the petitioner society, which failed to comply with the law.

The submission that the title dispute between the petitioner and others is irrelevant for the exercise of power by the VUDA cannot be accepted. The layout required for

the purpose of taking up construction of buildings/houses is referable to subsection (7) of Section 13 of the A.P. Municipalities Act, 1965. The same is to the effect that unless the Urban Authority gives approval or sanctions such development plan or layout, no person or body of persons can take up development of the area. Subsection (7) also casts a duty on the Authority to take into consideration the provisions of relevant law including the law relating to Town Planning and rules and regulations made thereunder. These terms used in subsection (7) having regard to the nature of the Act must be given wide aptitude. While considering a layout submitted by any person or body of persons, VUDA cannot ignore any Municipal law or law governing a Corporation as the case may be. Under Hyderabad Municipal Corporation Act, a duty is cast on a person seeking approval or sanction of building permission to produce necessary title deeds for verification by the Commissioner. If the Commissioner has a doubt as to the disputes of the title, it is always open to him to reject permission advising the persons to produce correct title deeds. Same is the case under the provisions of A.P. Municipalities Act, 1965. In an unreported judgment in **V. Jaya Prakash vs. The Commissioner of Municipality, Khapra Municipality,** in W.P. No.3929 of 2003 dated 24.11.2003, this Court considered the aspect of this matter. The question was whether it is competent for the Commissioner of Municipality to reject or to keep an application for building permission pending on the ground that there is a title dispute or on the ground that he has received rival claims. This Court having regard to the provisions of Subsection (7) of Section 13 under the Municipalities Act held that in the case where there is a dispute as to title where building activity has to be undertaken, the Commissioner should wait for the decision of the civil Court or any other competent judicial forum, it is incumbent to straight away sanction building permission. The relevant observations made in the judgment are as follows:

The intention of the legislation was that the Commissioner can refuse permission if there is a doubt about the title deed or any objection is raised. It is for this reason that sub-clause (4) of Section 215 was amended introducing the words to the effect that an applicant should enclose a copy of the title deed duly attested by a Gazetted Officer of the Government along with an urban land ceiling clearance certificate. 'Title deed' referred to in clause (2) of Section 215, in my opinion, is the title deed in respect of property free from any encumbrance. A rival claim for the same property is an encumbrance and if there is any objection raised by anybody, the Commissioner has to consider it and exercise his discretion. Similarly, in an approved layout if somebody wants to construct a building in area earmarked for a public or community purpose or earmarked for park, anybody can object and also challenge before appropriate forum. This interpretation is in the tune with the object with which the A.P. Municipalities Act was enacted.

The Municipalities Act is an Act *inter alia* providing for disciplined and planned growth of the municipal area. The power vested in various authorities should be exercised for public good. By exercising power in a manner, which would result in dispute, cannot be appreciated. The common law principle of absolute individual right is replaced by the principle of community welfare. Therefore, while passing orders under Section 213 read with Section 215, it is always open to the Commissioner to postpone the decision if there is a dispute between two rival claimants to the property in question. Indeed, when the dispute is *sub judice,* it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same. In this context, a reference may be made to Article 144 of the Constitution of India which is to the effect that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

The learned counsel for VUDA has also brought to the notice of this Court that a part of the land admeasuring 6363 Sq. meters out of Survey No.193/1 was handed over by the Deputy Inspector of Survey, Urban Land Ceiling to VUDA, as it was Urban Land Ceiling surplus land, and therefore, the petitioner cannot be said to have any title over the land. This is seriously disputed by the learned counsel for the petitioner. Therefore no opinion can be expressed on this aspect of the matter. It is for the petitioner to agitate this matter elsewhere.

In the result, with the above observations, I do not see any reason to accept the writ petition and the same is accordingly dismissed. No costs.

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V.V.S. RAO, J.

Date : JULY 19, 2004.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Vice Chairman, Visakhapatnam Urban Development Authority,

Visakhapatnam
2 The Special Officer, Urban Land Ceiling, Visakhapatnam.
3 The Secretary, Government, Housing, Municipal
Administration and Urban Development Department.

Government of Andhra Pradesh, Secretariat,

Saifabad, Hyderabad.

4. Two CCs to the Government Pleader for Municipal Administration &

Urban Development, High Court Buildings, Hyderabad (OUT)

5. Two CD copies.